

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-10542-GAO

MARK COBURN,
Plaintiff,

v.

SEAN DEERY and SHAWN McCARTHY,
Defendants.

OPINION AND ORDER

December 2, 2009

O'TOOLE, D.J.

After consideration of the parties' submissions, the defendants' motions to dismiss the plaintiffs' claims (dkt. nos. 13 and 15) are DENIED.

As to the defendants' argument that the complaint fails to state a claim upon which relief can be granted, the allegations of the Second Amended Complaint, if taken as true, are sufficient to allege plausible claims to relief under the various causes of action pled. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 559 (2007).

As to the defendants' claim to qualified immunity, the plaintiff has alleged facts which, if ultimately proved, would warrant a finding that the defendants detained him based solely on his past criminal history and not based on reasonable suspicion of current criminal activity. Those factual allegations are disputed by the defendants, but if they are proved as alleged, qualified immunity would not be available because a reasonable officer would know that a detention and pat-frisk based solely on the past criminal history of the person detained would not be justified

under the doctrine of Terry v. Ohio, 392 U.S. 1 (1968). At the very least, the qualified immunity defense cannot be adjudicated on the present motion and record.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge